

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

October 17, 2012

Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, George Papandreas, Tom Shamberger

MEMBERS ABSENT: Jim Shaffer

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and Bossio read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the August 15, 2012 hearing. Shamberger moved to approve as presented; seconded by Papandreas. Motion carried 3-0, with Bossio abstaining due to his absence at the August 15, 2012 hearing.

B. Minutes for the September 19, 2012 hearing. Approval was postponed due to the lack of a quorum of members present who attended the September 19, 2012 hearing.

C. Rescheduling November 2012 Meeting Date. Shamberger moved to reschedule the November 21st meeting date to Thursday, November 29th due to the Thanksgiving holiday; seconded by Cardoso. Motion carried unanimously.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. CU12-12 / PDA, LLC / 160 Fayette Street: Request by Project Management Services, on behalf of PDA, LLC, for conditional use approval of a "Restaurant, Private Club" in the B-4 General Business District at 160 Fayette Street; Tax Map 26A, Parcel 93. **WITHDRAWN BY PETITIONER**

Fletcher advised the Board that the petitioner's representative notified Staff that he wished to withdraw this conditional use petition and that no action was required by the Board.

- B. CU12-13 / Rocktop, LLC / 341 Chestnut Street:** Request by Kevin Wilkey of Lush Hospitality Group, on behalf of Rocktop, LLC, for conditional use approval of a “Restaurant, Private Club” in the B-4 General Business District at 341 Chestnut Street; Tax Map 26A, Parcels 79 and 80. **POSTPONED BY PETITIONER**

Fletcher advised the Board that the petitioner notified Staff the he wished for his conditional use petition to be postponed to the Board’s November hearing.

- C. V12-32 / Knowles / 730 Werner Ave:** Request by Kris Knowles for variance relief from Article 1345.04 as it relates to a proposed rear setback encroachment at 730 Werner Avenue; Tax Map 25, Parcel 345; B-1, Neighborhood Business District.

Fletcher read the Staff Report stating that the petitioner seeks to include an uncovered deck on the rear of the mixed-use building currently under construction. The deck will measure five and one-half feet deep by eight and one-half feet wide. Addendum A of this report illustrates the location of the subject site.

The minimum rear setback standard in the B-1 District is twenty (20) feet. However, the petitioner received approval for a fourteen-foot variance on August 17, 2011 under Case No. V11-24. As such, the building currently under construction has a rear setback of six feet. The proposed deck will therefore encroach into the minimum setback an additional five and one-half feet resulting in the deck being approximately six inches from the rear property boundary.

It should be noted that the Planning and Zoning Code does not permit encroachments by architectural features in the B-1 District (i.e., uncover porches) as is permitted in other zoning districts where residential and mixed-residential development are permitted.

The Board approved two additional variance petitions for the subject development on October 19, 2011 concerning front façade fenestration (Case No. V11-29) and a two-foot encroachment into the minimum front setback standard to accommodate awnings over the sidewalk along Werner Street (Case No. V11-30). Staff understands that the petitioner may no longer seek to utilize the variance approval relating to the awnings.

Bossio recognized the petitioner Kris Knowles of 851 Grand Street. Knowles shared some photos illustrating the construction project with the Board. He stated that this request was somewhat of an “afterthought” because he did not realize he would be building a deck a year ago when he came before the Board, but felt it would be a nice amenity. He stated that his rental demographic is not student-based.

There being no comments or questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being none, he asked if anyone was present to speak in opposition to the request.

Bossio recognized Rebecca Fedorko of 724 Richwood Avenue who stated that she lives across from the property under construction. She stated that she and her neighbors were very excited when he tore down a blighted structure and are happy he is building something of quality in its place, but stated that she is concerned about noise from the deck areas. She referred to another apartment complex at the corner of Richwood and James, in which tenants are very noisy in the warmer months, necessitating the calling of police several times a month.

There being no further comments in opposition, Bossio recognized Knowles for a five minute rebuttal.

Knowles stated that the size of the decks is significantly smaller than any of the decks in the area, being 5.5 deep and 8.5 wide. He stated that he does understand her concern and would like to be notified any time police are called on any of his tenants.

There being no further comments or questions by the Board, Bossio asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval as requested without conditions.

Cardoso said that it appears the decks will be built as far away from Fedorko's residence as it could be.

Bossio asked Fedorko to step to the podium again and asked if she now understands that the decks will be smaller than she thought they would be. She stated yes and that she understands and thought they were going to be larger in size than what was stated here this evening.

Cardoso stated that she feels with the small size of the deck and the target rental market that the petitioner stated he seeks to attract, she does not feel that noise will be an issue as a result of the proposed deck.

Shamberger stated he feels the size of the deck will determine the outside noise level, and that larger decks hold more people and generate more noise.

Papandreas commented that, had Mr. Knowles included the deck in his last variance request, the Board would have been approving a 19.5 ft. variance. Although he does not feel that a 5.5 x 8.5 ft. deck is going to be a problem, he is a little concerned with setting a precedent.

Bossio stated that those concerns are valid ones, but one thing to keep in mind is that the variance for these decks will be for only as wide as the decks are and not for the entire structure.

Shamberger moved to accept all the findings of fact as revised by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The following findings of fact were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The Board has already approved a rear setback encroachment of fourteen (14) feet (Case No. V11-24) for the building currently under construction. However, the Planning and Zoning Code does not permit encroachments by architectural features in the B-1 District (i.e., uncovered porches) as is permitted in other zoning districts where residential and mixed-residential development is permitted. The additional five and one-half foot encroachment for an uncovered rear porch does not appear to exacerbate or undermine the merits, spirit, or intent of the relief granted under Case No. V11-24.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of principal and accessory structures, along with related architectural features, within the immediate area that encroach into the required setbacks of the B-1 and R-1A Districts.

Finding of Fact #3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The granting of this variance would have no negative effect on public welfare or property values, as it allows the construction of a feature that appears to be consistent with the character of the neighborhood and surrounding properties.

Finding of Fact #4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The granting of this variance will have no effect on traffic congestion, as it has no bearing on city streets. The granting of this variance appears to integrate the patio and deck features of other developments within the immediate area.

Papandreas moved to approve variance petition V12-32 as requested without condition thereby allowing for an approximate six (6) inch rear setback of the proposed uncovered porch measuring 5.5 feet deep by 8.5 feet wide as illustrated on the exhibits submitted with the respective variance petition; seconded by Cardoso. Motion carried unanimously.

Bossio advised Knowles that the Board's decision could be appealed to Circuit Court within thirty days and that any work done related to this decision during this period would be at the petitioner's sole financial risk.

- D. V12-33 / Pownall / 816 Willowdale Road:** Request by Lisa Mardis of Project Management Services, on behalf of Tom Pownall, for variance relief from Article 1335.04 (B) as it relates to a proposed side-yard setback encroachment on a corner lot at 816 Willowdale Road; Tax Map 12, Parcel 14; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct an elevated, wraparound, covered porch beginning at or near the front entrance, returning along the northern side of the house, and then returning at or near the rear entrance. Addendum A of this report illustrates the location of the subject site.

Article 1335.04(B) provides that the minimum side setback for a corner lot on the side facing a street is one and one-half (1.5) times the normal side setback requirement, which is 7.5 feet in the R-1A District. The proposed covered porch will encroach into minimum setback requirement by two feet, four inches (2' 4"). The proposed encroachment requires variance approval by the Board.

It should be noted from the petitioner's submitted exhibits that the alignment of the subject house does not appear to be parallel with the side property boundary. As such, it appears that the proposed wraparound covered porch is in compliance towards the front of the house. However, the encroachment appears to begin at approximately fourteen (14) feet measured

from the rear corner of the proposed porch with the furthest side setback encroachment being 2' 4" at its rear corner.

Bossio recognized the petitioner's representative Lisa Mardis, Project Management Services, 160 Fayette Street, who stated that the Pownall's are renovating their home and seeking to provide a quality, outdoor space for his family.

There being no comments or questions by the Board, Bossio opened the public hearing portion asking if anyone was present to speak in favor of, or in opposition to, the request. There being none, Bossio declared the public hearing portion closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval as requested without conditions.

Papandreas moved to accept all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following findings of facts were included in the motion.

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The alignment of the subject house does not appear to be parallel with the side property boundary. As such, it appears that the proposed wraparound covered porch is in compliance towards the front of the house. However, the encroachment appears to begin at approximately fourteen (14) feet measured from the rear corner of the proposed porch with the furthest side setback encroachment being 2' 4" at its rear corner.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that there are similar side setback encroachments for corner lots within the R-1A District vicinity including 850 Willowdale Road, 510 Short Street, 501 Melrose Street, 465 Overhill Street, 235 Hoffman Avenue, and 746 Amherst Road.

Finding of Fact #3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed covered porch does not appear to encroach onto nor diminish the use and enjoyment of adjoining properties or public rights-of-way as the existing roadway width of Randolph Road is approximately fourteen feet while its platted right-of-way width is thirty feet. Further, the proposed covered porch improvement does not appear to obstruct visibility for the motoring public at the Randolph Road and Willowdale Road intersection.

Finding of Fact #4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed improvement will not change the existing single-family use of the dwelling and should contribute to the market value of the petitioner's house and comparable houses within the immediate area as is customarily experienced with similar exterior home improvements. The nature of the side setback variance relief cannot contribute to nor mitigate existing traffic patterns and congestion within the immediate area.

Cardoso moved to approve variance petition V12-33 as requested without condition thereby allowing for an approximate 2' 4" encroachment into the side setback requirement as illustrated on the exhibits submitted with the respective variance petition; seconded by Papandreas. Motion carried unanimously.

Bossio advised Mardis that the Board's decision could be appealed to Circuit Court within thirty days and that any work done related to this decision during this period would be at the petitioner's sole financial risk.

E. OTHER BUSINESS:

A. Public Comments (matters not on the agenda): None.

B. Staff Comments:

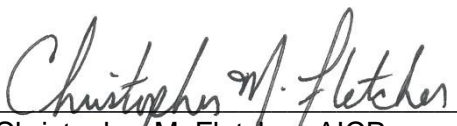
Fletcher confirmed with the Board that the rescheduled meeting date in November was to begin at 6:30 PM. Fletcher advised the Board that the Executive Secretary position had been filled and the candidate's first day was set for Monday, October 29, 2012.

F. ADJOURNMENT: 7:02 PM

MINUTES APPROVED:

December 19, 2012

BOARD SECRETARY:


Christopher M. Fletcher, AICP